Supreme Court, U.S.
FILED
FEB 7 2000
CLERK

(2)

No. 99-981

IN THE

Supreme Court of the United States

October Term 1999

COMMONWEALTH OF PENNSYLVANIA,

Petitioner,

v.

EDWARD HALYE,

Respondent,

On Petition for a Writ of Certiorari to the Superior Court of Pennsylvania

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Al Flora, Jr.
First Assistant Public Defender
Luzerne County Courthouse
200 North River Street
Wilkes-Barre, PA 18711
(570) 825-1754

Attorney for Respondent

11 pp

The Respondent asks leave to file the attached Brief in Opposition without payment of costs and to proceed In Forma Pauperis.

The Respondent has been represented by the Public Defender's Office of Luzerne County Pennsylvania and has proceeded In Forma Pauperis in all State Court proceedings.

Respondent since his arrest on criminal charges which have led to the instant proceedings has been incarcerated in the State Court system from September 1996 to the present and is currently incarcerated at the State Correctional Institution at Huntingdon Pennsylvania.

Respondent's declaration in support of this motion is attached hereto.

Al Flora, Jr., Esquire
First Assistant Public Defender
Luzerne County Courthouse
200 North River Street
Wilkes-Barre, PA 18711-1854
(570) 825-1754

Attorney for Respondent

COMMONWEALTH OF PENNSYLVANIA :

Petitioner : **No.** 99-981

vs. :

EDWARD HALYE, : 2850 **Term, 19**96

Respondent :

I, Edward Halye **being first duly sworn, depose and say that I am** Respondent **in the above entitled case; that in support of my motion for leave to proceed on petition for writ of certiorari in forma pauperis without being required to prepay fees, costs or give security therefore, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefore; that I believe I am entitled to redress.**

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of prosecuting the appeal are true.

1. Are you presently employed? NO

a. If the answer is yes, state the amount of your salary or wages per month and give the name and address of your employer.

b. If the answer is no, state the date of your last employment and the amount of the salary and wages per month which you received.

JULY 1986

2. Have you received within the past twelve months any income from a business, profession or other form of self employment or in the form of rent payments, interest, dividends or other income? NO

a. If the answer is yes, describe each source of income and state the amount received from each during the past twelve months.

3. Do you own any cash or checking or savings account? NO

a. If the answer is yes, state the total value of the items owned.

_____

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)? NO

a. If the answer is yes, describe the property and state its approximate value. _____

5. List the persons who are dependent upon you for support and state your relationship to those persons.

NONE

I UNDERSTAND THAT FALSE STATEMENTS OR ANSWERS TO ANY QUESTIONS IN THIS AFFIDAVIT WILL SUBJECT ME TO PENALTIES FOR PERJURY.

Dated this 24 day of JANUARY, 2000.

Edward Halye

EDWARD HALYE

CERTIFICATE

I hereby certify that the petitioner herein has the sum of $.46 **on account to his credit at the** SCI-HUntingdon **institution where he is confined. I further certify that petitioner likewise has the following securities to his credit according to the records of said** SCI-HUntingdon **institutions:** NONE

Charles E. Martin, Business Manager II

PA DEPT. OF CORRECTIONS — INMATE ACCOUNTS SYSTEM — RUN IAS365
BUREAU OF COMPUTER SERVICES — PARTIAL ACCOUNT LISTING — DATE 1/28/2000
REMOTE PRINT TIME 14:22 — FROM PURGE FILE — PAGE 1

INMATE NUMBER	NAME LAST	FIRST	MI	STARTING BALANCE
DK3707	HAYLE	EDWARD		-1.10

BATCH #	DATE MO DY YEAR		TRANSACTION DESCRIPTION	TRANSACTION AMOUNT	BALANCE AFTER TRANSACTION
7725	07-13-1999	10	MAINTENANCE PAYROLL JUNE, 1999	22.00	20.90
7734	07-13-1999	38	INSIDE PURCHASES XEROX COPIES WK ENDING 7/3/99	-.60	20.30
7741	07-14-1999	37	POSTAGE UNITED PARCEL SERVICE 7/8/99	-4.07	16.23
7812	07-21-1999	32	COMMISSARY JULY 21, 1999	-16.15	.08
7945	08-12-1999	10	MAINTENANCE PAYROLL JULY, 1999	21.00	21.08
7990	08-19-1999	44	ORGANIZATIONAL JAYCEE PHOTO'S	-3.50	17.58
8234	08-22-1999	32	HUN COMMISSARY FOR 8/22/1999	-17.50	.08
99	09-09-1999	38	INSIDE PURCHASES XEROX COPIES-25 AUGUST 1999	-.20	-.12
113	09-10-1999	10	MAINTENANCE PAYROLL AUGUST, 1999	15.00	14.88
8259	09-16-1999	32	HUN COMMISSARY FOR 9/16/1999	-14.63	.25
			BALANCE AFTER THESE TRANSACTIONS------>		.25

PA DEPT. OF CORRECTIONS
BUREAU OF COMPUTER SERVICES
REMOTE PRINT TIME 14:22

INMATE ACCOUNTS SYSTEM
PARTIAL ACCOUNT LISTING
FROM PURGE FILE

RUN IAS365
DATE 1/28/2000
PAGE 1

INMATE NUMBER	NAME LAST	FIRST	MI	STARTING BALANCE
DK3707	HAYLE	EDWARD		.25

BATCH #	DATE MO DY YEAR		TRANSACTION DESCRIPTION	TRANSACTION AMOUNT	BALANCE AFTER TRANSACTION
322	10-13-1999	10	MAINTENANCE PAYROLL SEPTEMBER, 1999	21.00	21.25
350	10-18-1999	31	OUTSIDE PURCHASES ACCESS CATALOG	-9.29	11.96
8294	10-21-1999	32	HUN COMMISSARY FOR 10/21/1999	-11.59	.37
482	11-09-1999	10	MAINTENANCE PAYROLL OCTOBER, 1999	21.50	21.87
8314	11-10-1999	32	HUN COMMISSARY FOR 11/10/1999	-21.26	.61
570	11-22-1999	41	MEDICAL SPORTS INJURY-14 NOVEMBER 1999	-2.00	-1.39
648	12-07-1999	10	MAINTENANCE PAYROLL NOVEMBER, 1999	33.00	31.61
8343	12-09-1999	32	HUN COMMISSARY FOR 12/09/1999	-22.25	9.36
8350	12-16-1999	32	HUN COMMISSARY FOR 12/16/1999	-9.11	.25
			BALANCE AFTER THESE TRANSACTIONS------>		.25

PA DEPT. OF CORRECTIONS — INMATE ACCOUNTS SYSTEM — RUN IAS365
BUREAU OF COMPUTER SERVICES — PARTIAL ACCOUNT LISTING — DATE 1/28/2000
REMOTE PRINT TIME 14:22 — FROM ACTIVE FILE — PAGE 1

INMATE NUMBER	NAME LAST	FIRST	MI	STARTING BALANCE
DK3707	HAYLE	EDWARD		.25

BATCH #	DATE MO DY YEAR		TRANSACTION DESCRIPTION	TRANSACTION AMOUNT	BALANCE AFTER TRANSACTION
875	01-12-2000	10	MAINTENANCE PAYROLL DECEMBER, 1999	31.38	31.63
8013	01-13-2000	32	HUN COMMISSARY FOR 1/13/2000	-30.77	.86
919	01-19-2000	38	INSIDE PURCHASES XEROX COPIES-29 DECEMBER 1999	-.40	.46
			BALANCE AFTER THESE TRANSACTIONS------>		.46

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RESPONDENT'S BRIEF IN OPPOSITION

Al Flora, Jr.
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Attorney for Respondent

REASONS FOR DENYING THE WRIT

The state courts of Pennsylvania have not decided this question of federal law in a way that conflicts with relevant decisions of this Court and other federal Circuit Courts. In E.B. Verniero, 119 F.3d 1077 (3rd Cir. 1997), the provisions of New Jersey's Megans Law that allocated the burden of proof to the defendant to prove that he was not a sexually violent predator was determined to violate procedural due process.

The conviction of a defendant of a predicate offense creates the presumption that the defendant is a sexually violent predator without proof of additional facts. 42 Pa.C.S.A. 9794 (b). As a result, Megans Law alters the maximum penalty for the offense for which the defendant was convicted to a mandatory maximum sentence of life imprisonment. 42 Pa. C.S.A. 9799.4. This statutory scheme, which is a criminal rather than civil process, does not create a sentencing enhancement but rather an alteration of a maximum sentence without proof of additional facts. Such a scheme violates procedural due process. Specht v. Patterson, 386 U.S. 605, 609-10, 87 S.Ct. 1209, 1212 (1967) (Colorado's Sex Offenders Act which allows for an indeterminate to life sentence after conviction of a predicate offense violated procedural due process); McMillan v. Pennsylvania, 477 U.S. 79, 106 S.Ct. 2411 (1986) (proof of additional facts under mandatory sentencing scheme which does not alter maximum penalty only serves to enhance penalty and does not violate due process). See, Kansas v. Hendricks, ___U.S.___, 117 S.Ct. 2072, 138 L.Ed.2d 501 (1997) (Kansas Sexually Violent Predator Act does not violate procedural due process because, as part of a civil process, it places

the burden of proof upon the state and does not increase an offender's maximum term of imprisonment).

Respondent further maintains that the reversal of the law in this case, thus requiring the burden of persuasion to be placed upon the Commonwealth, protects citizens by insuring that its classification system is fair and accurate. The reversal of the law also protects the fundamental liberty rights of defendants by requiring an accurate and reasonable disposition of the issues before state criminal trial courts. Imposing the burden of proof upon the Commonwealth materially minimizes the risk of error in determining that a defendant is a sexually violent predator without impairing the states ability to secure a prompt determination. Matthews v. Eldridge, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed. 2d 18 (1976).

CONCLUSION

The Petition for Writ of Certiorari should be denied.[1]

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Attorney for Respondent

[1] The Petition for Writ of Certiorari should be to the Pennsylvania Supreme Court rather than the States Intermediate Appellate Court.